

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DONNA KESLING and	:	
RONALD KESLING	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	
	:	NO. 98-6630
RHONDA FAGAN VEDDER ¹ and	:	
THOMAS VEDDER	:	
Defendant	:	
	:	
v.	:	
	:	
GENERAL MOTORS CORPORATION and	:	
F.C. KERBECK AND SONS, INC.	:	
Defendant	:	

MEMORANDUM AND ORDER

YOHN, J. December , 1999

Defendant F.C. Kerbeck and Sons, Inc. [“Kerbeck”] requests that the court grant it summary judgment on all claims against it pursuant to Federal Rule of Civil Procedure 56(c). *See* Def.’s, F.C. Kerbeck & Sons, Inc., Mem. of Law in Support of its Mot. for Summ. J. [“Kerbeck Mem.”] at 9. The Vedders filed a third party complaint alleging that the January 7, 1998, car accident for which the Vedders were sued by the plaintiffs was caused by brakes that malfunctioned due to negligent repair by Kerbeck. *See* Kerbeck Mem. Ex. B ¶¶ 12-20. Kerbeck contends that there is no genuine issue of material fact with respect to Kerbeck being a

¹The lawyer representing Rhonda Fagan Vedder and Thomas Vedder [“the Vedders”] refers to Rhonda Fagan Vedder in court documents both as “Rhonda Pagan” and “Rhonda Fagan Vedder.” The court will use the name used in his most recent filing, Rhonda Fagan Vedder.

substantial cause of the plaintiffs' injuries because the expert evidence relied on by the Vedders to support their claims against Kerbeck does not prove causation. *See* Kerbeck Mem. at 1. The plaintiffs and the Vedders contend that the report of Hard Facts Investigative Engineering ["Hard Facts"] constitutes sufficient proof of causation to allow the survival of the claims against Kerbeck. *See* Pls.' Donna Kesling & Ronald Kesling's Mem. of Law in Resp. to Def.'s Mot. for Summ. J. ["Pls.' Mem."] at 4; Defs.' Vedder and Fagan Vedder's Reply to Def. F.C. Kerbeck's Mot. for Summ. J. ["Vedder Mem."] at 1.

Either party to a lawsuit may file a motion for summary judgment, and it will be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When a court evaluates a motion for summary judgment, "the evidence of the nonmovant is to be believed." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Additionally, "all justifiable inferences are to be drawn in [the nonmovant's] favor." *Id.* Even so, "an inference based upon a speculation or conjecture [such as expert testimony lacking a foundation] does not create a material factual dispute sufficient to defeat entry of summary judgment." *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990).

Kerbeck argues that the Hard Facts Report, Kerbeck Mem. Ex. D, states only an unsupported conclusion of possibility and not a definite statement of probability that Kerbeck was the cause of a loose screw that led to leaking brake fluid, malfunctioning brakes, and ultimately to the January 7, 1998, accident that is the subject of this case. *See* Kerbeck Mem. at

5-7. Specifically, Kerbeck contends that the Hard Facts Report fails to eliminate other possible causes of the loose screw.²

Kerbeck also argues, in effect, that because the conclusion of the Hard Facts Report is mere unsupported speculation, it would not assist the trier of fact in determining causation and that, therefore, the Hard Facts Report is not competent expert testimony. *See* Kerbeck Mem. at 7-9. The plaintiffs and the Vedders dispute Kerbeck's interpretation of the Hard Facts Report. *See* Pls.' Mem. at 4-6; Vedder Mem. at 5-6.

After reviewing the Hard Facts Report and drawing all inferences in favor of the nonmoving parties, the court concludes that the Hard Facts Report sufficiently establishes a genuine issue of material fact as to whether Kerbeck caused the screw to be loose. Hard Facts considered the following facts in reaching its conclusion that Kerbeck caused the screw to be loose. The Vedders' car was serviced only by Kerbeck. *See* Kerbeck Mem. Ex. D at 2. Kerbeck performed brake service on the car at least as recently as October, 1997. *See id.* at 12. Subsequent to that brake servicing, the Vedders noticed intermittent problems with their brakes. *See id.* at 2. Hard Facts found a loose screw that had caused and was causing brake fluid to leak. *See id.* at 10. This brake fluid leak accounted for the problems with the brakes observed by the Vedders. *See id.* at 11. The screw was not loose enough to be turned by thumb and forefinger. *See id.* at 10. The looseness of the screw was not caused by the accident. *See id.* Screws like the loose screw at issue are typically loosened when brake pads are replaced. *See id.* Considering

²Because Kerbeck does not point to an absence of evidence that the loose screw would have caused brake fluid to leak, that leaking brake fluid would have caused the brakes to malfunction, or that malfunctioning brakes would have caused the January 7, 1998, accident, *see id.*, the court will not examine these issues in deciding Kerbeck's motion for summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

these facts, the Hard Facts Report concluded that “it is likely the left front caliper bleeder screw was accessed during [the October, 1997,] service.” *Id.* at 11. This conclusion is not mere speculation or conjecture. Moreover, this conclusion leads to the reasonable inference that Kerbeck failed to tighten the screw after accessing it.

Although Kerbeck is correct in pointing out that expert testimony stated in terms of a percentage is particularly persuasive, *see* Kerbeck Mem. at 5 (citing *Breidor v. Sears, Roebuck & Co.*, 722 F.2d 1134, 1138 (3d Cir. 1983)), the Third Circuit has warned against failing to analyze the substance of expert testimony and looking, instead, for particular buzzwords or phrasing. *See Schulz v. Celotex Corp.*, 942 F.2d 204, 208 (3d Cir. 1991). Thus, it is not decisive that the conclusion in the Hard Facts Report is not stated in terms of a probability. Based on the substance of the Hard Facts Report, a reasonable jury could conclude that Kerbeck caused the screw at issue to be loose, that the loose screw caused leakage of brake fluid, and that leaking brake fluid led to the malfunctioning brakes that the Vedders claim caused the January 7, 1998, accident. Thus, a genuine issue of material fact remains as to causation.

Accordingly, the court will deny Kerbeck’s motion for summary judgment. An appropriate order follows.

